

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6026-CIV-FERGUSON/SNOW

WORLDNET COMPANIES, INC.,
a Florida corporation.
Plaintiff.

vs.

KLELINE, a Limited Company,
a corporation incorporated under the laws
of France. ABDALLAH HITTI, individually.
AYHUB HITTI, individually.
BANQUE PARIBAS S.A., a banking
corporation incorporated under the laws of France.
OCRAM EST., a Liechtenstein corporation, and
MICHAEL BENDE, individually.
Defendants.

**NIGHT BOX
FILED**

MAY 18 2000

CLARENCE MADDOX
CLERK, USDC / SDFL / FYL

PLAINTIFF'S RESPONSE AND MEMORANDUM
OF LAW IN OPPOSITION TO DEFENDANT OCRAM'S
AMENDED MOTION TO VACATE CLERK'S ENTRY OF DEFAULT

COMES NOW the Plaintiff, WORLDNET COMPANIES, INC., by and through
undersigned counsel and pursuant to S.D. Fla. L.R. 7.1 C. and files this Response and
Memorandum of Law in Opposition to OCRAM's Amended Motion to Vacate Clerk's Entry of
Default and states as follows:

1. On March 31, 2000, the Clerk of the Court entered a Clerk's Default against
Defendant OCRAM EST. ("OCRAM") for failing to appear, answer or otherwise defend this
action.
2. Over one month later, on May 1, 2000, OCRAM, through its counsel, filed a Motion

to Vacate Clerk's Entry of Default. On May 3, 2000, OCRAM filed an Amended Motion to Vacate Clerk's Entry of Default.

3. OCRAM fails to justify its default and, as of this date, still has not filed a Answer or an appropriate response to Plaintiff's Complaint.

4. As grounds for setting aside the default, OCRAM points to "excusable mutual mistake and/or excusable neglect." Specifically, the mistake and/or neglect cited by OCRAM is that OCRAM thought it had counsel.

5. OCRAM's request for relief from the default is insufficient for several reasons. First, OCRAM failed to comply with S.D. Fla. L.R. 7.1 A. 1, in that neither its Motion nor its Amended Motion was accompanied by a memorandum of law. Thus, OCRAM offers no supporting authority for its Motion.

6. Second, OCRAM fails to satisfy the prerequisites for relief from default. In order to vacate entry of default, the moving party must establish: (1) good cause for default; (2) quick action to correct it; and (3) a meritorious defense to the Complaint. Pretzel & Stouffer v. Imperial Adjusters, 28 F.3d 42 (7th Cir. 1994).

7. OCRAM does not establish good cause for defaulting. The reason cited in its Amended Motion is that OCRAM thought it had counsel. Such a lack of communication between a party and its counsel does not establish good cause. Id. at 45 (citing C.K.S. Engineers, Inc. v. White Mountain Gypsum Co., 726 F.2d 1202, 1207 (7th Cir. 1984)).

8. Furthermore, OCRAM did not take quick action to correct the default, as required by law. Instead, OCRAM waited over a month after entry of default to file its Motion to vacate the default and still has not filed an Answer or response to the Complaint.

9. Finally, OCRAM fails to raise a meritorious defense and does not even claim to have a defense at all. OCRAM should have established its defense in its Amended Motion or, at the very least, indicated to the Court that it did have a meritorious defense. As OCRAM has failed to even address that requirement, its Amended Motion is insufficient.

WHEREFORE, the Plaintiff, having responded to OCRAM's Amended Motion, respectfully requests that this Court let the default entered on March 31, 2000 stand.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. mail on May 1st, 2000 upon the parties according to the attached service list.

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SERVICE LIST

Worldnet Companies, Inc., vs. KLELine, et. al.
Case No.: 00-6026-CIV-FERGUSON

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